

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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	:
JAMES ALLEN, CHARLES EVANS, PEARL	:
EVANS, GARY GRANT, LORETTA GRANT,	:
BILL MCNAIR, and SEAN SERRAO on	:
behalf of themselves and others similarly	:
situated,	:
	:
Plaintiffs,	:
	:
-against-	:
	:
TRIBUNE NEW YORK NEWSPAPER	:
HOLDINGS, LLC d/b/a AM NEW YORK;	:
TRIBUNE COMPANY; MITCHELL'S	:
SUBSCRIPTION SERVICE LLS d/b/a LBN	:
CONSULTING, LLC; and MORNING	:
NEWSPAPER DELIVERY, INC.,	:
	:
Defendants.	:
	:
-----X	

07-cv-4619 (JSR)

Document Electronically Filed

**DECLARATION OF EDWARD CERASIA II, ESQ. IN SUPPORT OF THE
TRIBUNE DEFENDANTS' MOTION FOR ATTORNEYS' FEES AND COSTS**

I, EDWARD CERASIA II, ESQ., of full age and sound mind, hereby declare under penalty of perjury as follows:

1. I am an attorney-at-law admitted to practice in this Court and am a partner in the law firm of Morgan, Lewis & Bockius LLP, attorneys for defendants Tribune New York Newspaper Holdings, LLC d/b/a amNewYork and Tribune Company (collectively, the "Tribune Defendants"). I make this Declaration in support of the Tribune Defendants' motion for attorneys' fees and costs.

2. On August 6, 2007, I conferred by telephone with plaintiffs' counsel, Maimon Kirshenbaum, to prepare a case management plan for submission to the Court. Mr. Kirshenbaum

filed that proposed case management plan with the Court by ECF on August 6, 2007.

3. On August 7, 2007, I spoke by telephone with Mr. Kirshenbaum regarding the grounds for the Tribune Defendants' proposed motion to dismiss the state law class action claims in the Amended Complaint and the need to contact the Court's chambers to arrange for a pre-motion conference in accordance with the Court's Individual Rules of Practice.

4. During our August 7, 2007 conversation regarding the Tribune Defendant's proposed motion to dismiss the state law class action claims in the Amended Complaint, Mr. Kirshenbaum expressed familiarity with the issue and even mentioned a new case by name on that issue.

5. During the August 7, 2007 conference call with the Court's law clerk, Brian Jacobs, the parties were advised that the Tribune Defendants' Answer to the Amended Complaint was due on August 14, 2007, and that the Court would address the motion to dismiss at the Rule 16 conference on August 13.

6. At approximately 3:43 p.m. on August 13, 2007, Mr. Kirschenbaum filed a Notice of Voluntary Dismissal by ECF.

7. Attached hereto as Exhibit A is a true and accurate copy of an e-mail that Mr. Kirshenbaum sent to me and other defense counsel, dated August 13, 2007, explaining why he voluntarily dismissed the Amended Complaint.

8. On August 15, 2007, I spoke by telephone with Mr. Kirshenbaum and Charles Edward Joseph regarding the grounds for the Tribune Defendants' proposed motion for attorneys' fees and costs associated with the voluntary dismissal, the underlying facts, and the need to contact the Court's chambers to arrange for a pre-motion conference.

9. During the August 15, 2007 telephone call with plaintiffs' counsel, Mr. Kirshenbaum again asserted that he did not become aware of potential supplemental jurisdiction problems, in

the vein that the alleged state law minimum wage damages exceeded those available under federal law, until after he spoke with David Warner, counsel for defendant Morning Newspaper Delivery, Inc., at the conclusion of the August 13 conference.

10. On or about June 21, 2007, I spoke by telephone with Mr. Kirshenbaum. During that call, he generally mentioned that he worked with Richard J. (Rex) Burch of the Bruckner Burch PLLC law firm in Houston, Texas.

11. A search of the dockets in the Southern District of New York reveals that Mr. Burch has appeared as co-counsel with Joseph & Herzfeld at least three times.

12. A search of the dockets in the Southern District of New York shows that Mr. Burch voluntarily dismissed a federal and state wage and hour law case that was pending before this Court. A true and accurate copy of the docket sheet for the case encaptioned Fouyolle v. J.P. Morgan Chase & Co., No. 1:04-cv-00978, is attached hereto as Exhibit B.

13. My firm has conducted a reasonable search of the docket sheets in this District and we have discovered twelve unrelated pending complaints filed by plaintiffs' counsel, Joseph & Herzfeld, alleging claims under the Fair Labor Standards Act and New York Labor Law. Attached hereto as Exhibit C are true and accurate copies of these complaints. Nine of these complaints filed by plaintiffs' counsel allege violations of federal and state minimum wage laws.

14. Attached hereto as Exhibit D is a true and accurate copy of the docket sheet for Nelson et al. v. Merrill Lynch & Co., No. 1:05-cv-07630 (S.D.N.Y.). Attached hereto as Exhibit E is a true and accurate copy of the March 30, 2006 Stipulation and Order of Dismissal in the Nelson case.


15. Attached hereto as Exhibit F is a true and accurate copy of the docket sheet for Cooper v. J.P. Morgan Chase & Co., No. 03-cv-10061 (S.D.N.Y.).

16. Attached hereto as Exhibit G is a true and accurate copy of the Complaint that plaintiffs' counsel filed on or about August 20, 2007, against the Tribune Defendants in New York Supreme Court.

I declare, pursuant to 28 U.S.C. § 1467, under penalty of perjury, that the foregoing is true and correct.

Dated: New York, New York
August 28, 2007

Respectfully submitted,



Edward Cerasia II

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on August 28, 2007, I caused to be served a copy of the foregoing Declaration of Edward Cerasia II, Esq. in Support of the Tribune Defendants' Motion for Attorneys' Fees and Costs, Pursuant to Fed. R. Civ. P. 16(f) and the Court's Inherent Authority by ECF and U.S. mail, postage prepaid, on the following counsel for plaintiffs:

D. Maimon Kirschenbaum
Joseph & Herzfeld LLP
757 Third Avenue, 25th Floor
New York, New York 10017


Christie Del Rey-Cone